

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
Civil Action No. 5:20-cv-00086-FL

MARCOS BENITEZ GONZALEZ, ISAAC )  
GONZALEZ HERNANDEZ, VICTORINO )  
FELIX ANTONIO, JUAN JAVIER VARELA )  
CUELLAR, RUBEN DOMINGUEZ ANTONIO, )  
RIGOBERTO CARTERAS JARDON, JORGE )  
BAUTISTA SABINO, EMMANUEL CRUZ )  
RIVERA, CELSO GONZALEZ TREJO, ERIC )  
JACINTO WENCES VASQUEZ, MARTIN )  
NELSON WENCES VASQUEZ, PORFIRIO )  
BAUTISTA CRUZ, ALEJANDRO DE LA CRUZ )  
MEDINA, JOSE ESTEBAN HERNANDEZ )  
CRUZ, SIXTO HERNANDEZ BUENO, )  
VIRGINIO ANGELES GONZALEZ, TIBURCIO )  
ANTONIO MANUEL, and HUMBERTO )  
ANTONIO HERNANDEZ, on behalf of )  
themselves and all other similarly situated persons, )  
Plaintiffs, )

v. )

O.J. SMITH FARMS, INC., BOSEMAN FARMS, )  
INC., GREENLEAF NURSERY CO., SBHLP, )  
INC., JOEL M. BOSEMAN, JEAN J. BOSEMAN, )  
PEYTON G. MCDANIEL, SANDRA W. )  
MCDANIEL, and SALVADOR BARAJAS, )  
Defendants. )

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**ORDER APPROVING CONTENT OF NOTICE TO  
CLASS ACTION MEMBERS IN *BENITEZ GONZALEZ et al., v. O. J. SMITH FARMS, INC. et al.*,  
AND METHOD FOR DISTRIBUTING NOTICE**

This matter is before the Court on the Joint Motion by the named Plaintiffs and defendants O. J. Smith Farms, Inc., Peyton G. McDaniel, and Sandra W. McDaniel (collectively “Smith Farms”) to Approve Notice to Class Action Members and to Approve Method for Distributing Notice. In support of their Joint Motion, Plaintiffs and Smith Farms have filed a stipulated notice and method of

distribution. The proposed content and method of distribution for that notice are consistent with that previously approved for use in other similar wage actions before the federal courts of this and other states. See *Haywood v. Barnes*, 109 F.R.D. 568 (E.D.N.C. 1986); and *Rosas v. Saraband Farms, LLC*, Case No. C18-0112-JCC, 2019 U.S. Dist. LEXIS 28556 \*2-7; 2019 WL 859225 (W.D.Wa. Feb. 22, 2019)(approving use of text messaging to give notice to members of class composed of H-2A workers). See also *Roes v. SFBSC Mgmt.LLC*, 944 F.3d 1035, 1045-48 (9<sup>th</sup> Cir. 2019)(approving use of Facebook posting to give notice to members of highly transient, geographically dispersed class). They also appear to be reasonably calculated to provide the best notice practicable under the circumstances of this case.

The proposed Notice to Class Action Members of Proposed Settlement with Smith Farms, Deadline for Objections, and Opportunity to Withdraw (the “Notice”) is both a neutral and comprehensive document that fairly apprises the Plaintiff Class Members of (i) the pendency of the class action, (ii) the substance of the litigation, (iii) the reasons for compromising the claims, (iv) the terms of the proposed settlement, and (v) the opportunity to withdraw. The Notice also provides the Plaintiff Class Members with an opportunity to obtain any necessary further information, and apprises them of their right to object to the settlement, the objection deadline, and the date of the hearing on this Court’s final approval, if any, of the Settlement Agreement.

The Court therefore formally approves the content of the Notice attached to the Joint Motion, as well as the method of distribution for the Notices to class action members set out in the Joint Motion. Consistent with the safety and health of those involved in giving notice to the members of the Smith Farms FLSA/NCWHA class the Court has certified, by separate Order, a copy of the Court-approved Notice which shall be distributed to the members of that class in the following manner within the following time deadlines:

*Administrative Costs.* The parties stipulate and agree that based on currently available records there may be up to an estimated one hundred seventeen (117) additional members of the proposed class (other than the named Plaintiffs minus Plaintiff Humberto Antonio Hernandez who is not a member of this class). Within thirty (30) days after the Court gives its final approval of the terms of the Settlement Agreement (“final Court approval”), Smith Farms agrees to pay to Plaintiffs’ counsel for the costs of administering the class fund portion of the settlement by remitting the sum of a maximum of \$130 per person in the

class upon the delivery of reasonably detailed written invoice(s) by Plaintiffs' counsel to Smith Farms' counsel of record in this action. These costs are not to be included in the Settlement Fund and any unused monies shall be returned to Smith Farms subject to the billing procedure whereby Plaintiffs' counsel will provide Smith Farms with an invoice from a third party entity or entities for the amount of any monies used by Plaintiffs' counsel to pay for class notice. The Law Offices of Robert J. Willis, P.A. ("Class Counsel" or "Plaintiffs' Counsel" or "Willis") shall give the best notice that is practicable under the circumstances to the members of the class certified by the Court under Rule 23(b)(3), including individual notice to all members who can be identified through reasonable effort. It is the parties' expectation that the respective amount spent on giving notice to each member of the class will vary but in no event will the cost exceed \$130 per person in the class.

*Distribution of Notice.* The following methods will be utilized in the attempt to successfully provide individual notice pursuant to Rule 23(c)(2)(B) of the Federal Rules of Civil Procedure in accordance with the interests of the class pursuant to Rule 23(g)(4) of the Federal Rules of Civil Procedure:

- A. One mailing by USPS (with undeliverable re-processing by the USPS for an anticipated 40% of the class members) to the last known mailing address in Mexico of each NCHWA class member with Smith Farms to provide Class Counsel with a copy of any I-9 forms or other document(s) it received from SBHLP, Inc./Salvador Barajas containing that last known address for each NCWHA class member,
- B. A DHL mailing (with undeliverable re-processing by DHL for an anticipated 40% of the class members). The parties understand that depending upon the postal code in Mexico, each mailing would cost \$50-60 (assuming mailings are mostly in central Mexico),
- C. Text and WhatsApp delivery of an agreed upon summary of that Notice to the last known text and/or WhatsApp number of all class members at the last known, if any, cellphone or WhatsApp number for each NCHWA class member provided by or through Smith Farms and/or Pablo Arriaga Zacarias,
- D. Ten trips by contracted representative(s) of Class Counsel to labor camp(s) in Edgcombe or Nash County identified by Class Counsel and/or Smith Farms as the present or likely NC domicile of any significant number of NCWHA class member(s) to distribute Class Notice packets and claim forms, and
- E. The printing costs for the class notice packets.

The parties agree that the methods described in paragraphs A.-E. above to be used to complete reasonable notice to individual class members may vary as, for example, no mailing is possible without a complete mailing address, and, because of the effect of the COVID-19 pandemic in the Republic of Mexico, DHL may not be delivering mail to the addresses of certain class members even if such addresses are complete.

- a) The parties also agree that it is in the interests of the Class under Rule 23(g)(4) for Class Counsel to undertake reasonable best efforts to both deliver notice to each potential class member and to distribute relief to the class in the most efficient and cost-effective manner that is reasonably possible.
- b) Complete Notice to the class shall be provided within 180 days after the Court's preliminary approval of the Settlement Agreement. No claim for compensation from the Class Fund shall be considered to be timely if the class member making it does not do so within 240 days of the date on which the Court grants its preliminary approval of the Settlement Agreement, and support that claim with a legible copy of that class member's Mexican passport or other government-issued photo identification card.
- c) Class Counsel shall also provide Smith Farms with a reasonably detailed invoice(s) showing how funds were spent delivering notice.

IT IS SO ORDERED.

This the 13th day of January, 2021.

  
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THE HONORABLE LOUISE W. FLANAGAN  
U.S. District Judge